

VZCZCXRO9239
PP RUEHRC
DE RUEHBR #1466/01 2141146
ZNR UUUUU ZZH
P 021146Z AUG 07
FM AMEMBASSY BRASILIA
TO RUEHC/SECSTATE WASHDC PRIORITY 9651
INFO RUEHSD/AMCONSUL SAO PAULO 0519
RUEHRI/AMCONSUL RIO DE JANEIRO 4875
RUEHRC/AMCONSUL RECIFE 7016

UNCLAS SECTION 01 OF 02 BRASILIA 001466

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E.O. 12958: N/A

TAGS: [EINV](#) [KIDE](#) [ENRG](#) [CASC](#) [ECON](#) [OPIC](#) [PGOV](#) [BR](#)

SUBJECT: BRAZIL: SUBMISSION FOR INVESTMENT DISPUTES AND EXPROPRIATION REPORT - JUNE 2007

¶1. (SBU) Summary: Per instructions in reftel, US Embassy Brasilia is aware of one (1) claim of US persons that may be outstanding against the Government of Brazil (GOB).

Claim 1

a. Claimants A and B

b. 1999

c. Claimants A and B, along with a Brazilian partner, through a joint venture (JV), purchased 33 percent of the voting shares of the electric power company CEMIG from the state of Minas Gerais, for \$1.05 billion in 1997. The acquisition was made through a public auction promoted by the national development bank (BNDES). The sale

included a Shareholders Agreement that the purchasers executed with the state of Minas Gerais, giving the JV certain negative control (i.e., veto) rights over the management of CEMIG and the ability to nominate some of the executive officers. However, in 1999, a new state government took office and challenged the validity of the Shareholders Agreement in a suit filed in a lower state court. The state court overturned the Shareholders Agreement in 1999, depriving the JV of the negative control rights. This left the JV with a 33% ownership stake but no influence over the management of the company. In 2001, the Appellate Court of Minas Gerais rejected the JV's appeal and sought to deny the JV access to the Brazilian federal Superior Court and Supreme Court of Justice, where the JV has further appealed the decision. Those appeals remain pending.

According to the Claimants, the shares alone, in the absence of a Shareholders Agreement, were worth no more than \$400 million. The difference in value between purchase price of the JV's shares in CEMIG and their value stripped of the negative control rights, according to the claimants, approximates the outstanding balance (\$700 million) of a loan extended to the JV by the BNDES to finance the share purchase. Although BNDES rescheduled that loan, the JV subsequently went into default on this loan. The JV actively negotiated with BNDES on ways to settle the outstanding debt. During 2005, U.S. officials repeatedly raised the dispute with senior GOB officials until the case went to court.

According to the Claimants, the JV and BNDES have come to an agreement to settle the debt through the sale of a portion of claimants' shares. The sale is subject to regulatory approval. Post has been notified that the parties are still working on this case. As of June 2007 the case is still pending.

Claim 2 (resolved)

a. Claimant C

b. 2003

c. In 1998, the State of Parana auctioned off a 40% voting interest in the state's sanitation utility, Sanepar. To induce private investors to provide the needed equity capital, the state offered the winning bidder a 15-year "Shareholders Agreement" that guaranteed certain customary minority shareholder protections as well as provided the investors a limited operating role through the appointment of three of the seven executive officers of Sanepar. A consortium of investors purchased the Sanepar stake. Claimant C held an indirect \$18 million stake in the consortium. A Joint Venture (JV) between a Spanish and a French company also invested in Sanepar through this consortium.

In February 2003, the new Parana state governor, Robert Requia, unilaterally terminated the Shareholders Agreement and subsequently replaced two of the three Sanepar executive officers that the investment consortium had the right to appoint. Having effectively achieved ownership and management control of Sanepar, Governor Requia also amended the company By-Laws without approval of the minority board members and undertook a debt-for-equity swap with the state government that diluted the minority shareholders' stakes. Following the annulment of the Shareholder's Agreement, the French company sold its interest in the company to its Spanish JV partner. Claimant C was initially contacted about this matter by the Global Environment Emerging Markets Fund II (GEEMF II) in 2005. At the time, GEEMF II was a Claimant C borrower under financing that was originally provided by Claimant C to support eligible fund investments. GEEMF II's indirect investment in Sanepar was partially financed under the Claimant C's loan. Between 2005 and 2006, Claimant C provided limited advocacy support to GEEMF II with regard to the Sanepar situation. However, in 2006, Claimant C was fully prepaid on its loan to GEEMF II. Consequently, it is no longer a lender to GEEMF and does not have a stake in the matter

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concerning Sanepar. Hence, as of June 2007 the status of this case has been resolved to the satisfaction of the U.S. investor.

As of June, 2007 there are no other investment disputes or expropriation claims to report in Brazil.

List of Claimants

Claimant A: Mirant (known as Southern Electric at the time of the purchase)

Claimant B: AES

Claimant C: Overseas Private Investment Corporation (OPIC), through credit to the Global Environmental Emerging Markets Fund II (GEEMF II).

Sobel